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NOV 16 2018

The Honorable Richard A. Jones

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,

No. CR18-277RAJ

**PLEA AGREEMENT**

v.

JEFF ZIRKLE,  
Defendant.

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Seth Wilkinson, Assistant United States Attorney; and Jeff Zirkle, and his attorney, Harold Malkin, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. **Interdependence of Agreements:** This Plea Agreement is conditioned on: (a) the entry of a guilty plea and Plea Agreement by Craig Lorch in this matter; and (b) the execution by Total Reclaim and the United States of a non-prosecution agreement. If either of these events fails to occur by November 16, 2018, or if either Defendant or Craig Lorch later seeks to withdraw his guilty plea, the United States may, at its election, withdraw from either or both Plea Agreements. If the United States chooses to withdraw from this Plea Agreement under these circumstances, Defendant understands that the United States may seek an Indictment against him for all crimes for which the United States has sufficient evidence.

U.S. v. Jeff Zirkle; Plea Agreement- 1

UNITED STATES ATTORNEY  
700 STEWART STREET,  
SUITE 5220  
SEATTLE, WASHINGTON 98101  
(206) 553-7970

1       2.     **Waiver of Indictment.** Defendant, having been advised of the right to be  
2 charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge  
3 brought by the United States Attorney in an Information.

4       3.     **The Charge.** Defendant, having been advised of the right to have this  
5 matter tried before a jury, agrees to waive that right and enter a plea of guilty to the  
6 charge of Conspiracy to Commit Wire Fraud in violation of Title 18, United States Code,  
7 Section 371, as charged in Count 1 of the Information.

8       By entering a plea of guilty, Defendant hereby waives all objections to the form of  
9 the charging document. Defendant further understands that before entering his guilty  
10 plea, he will be placed under oath. Any statement given by Defendant under oath may be  
11 used by the United States in a prosecution for perjury or false statement.

12       4.     **Elements of the Offense.** The elements of Conspiracy to Commit Wire  
13 Fraud in violation of Title 18, United States Code, Section 371 are as follow:

14       *First*, there was an agreement between two or more persons to commit the crime  
15 of wire fraud;

16       *Second*, the defendant became a member of the conspiracy knowing of its object  
17 and intending to help accomplish it; and

18       *Third*, one of the members of the conspiracy performed at least one overt act for  
19 the purpose of carrying out the conspiracy.

20       The elements of Wire Fraud are as follow:

21       *First*, the defendant knowingly devised or participated in a scheme or plan to  
22 defraud, or a scheme or plan for obtaining money or property by means of false or  
23 fraudulent pretenses, representations or promises;

24       *Second*, the statements made or facts omitted as part of the scheme were material;  
25 that is, they had a natural tendency to influence, or were capable of influencing, a person  
26 to part with money or property;

1        *Third*, the defendant acted with the intent to defraud, that is, with the intent to  
2 deceive or cheat; and

3        *Fourth*, the defendant used, or caused to be used, the interstate wires to carry out  
4 or attempt to carry out an essential part of the scheme.

5        5.        **The Penalties.** Defendant understands that the maximum penalties  
6 applicable to the offense of Conspiracy to Commit Wire Fraud in violation of Title 18,  
7 United States Code, Section 371 are as follow: A maximum term of imprisonment of  
8 five (5) years, a fine of up to two hundred fifty thousand dollars (\$250,000), or twice the  
9 gross pecuniary gain to the defendant or the gross pecuniary loss to the victims of the  
10 offense, a period of supervision following release from prison of up to three (3) years,  
11 and a mandatory special assessment of one hundred dollars (\$100). If a probationary  
12 sentence is imposed, the probationary period can be for up to five (5) years. Defendant  
13 agrees that the special assessment shall be paid at or before the time of sentencing.

14        Defendant understands that supervised release is a period of time following  
15 imprisonment during which he will be subject to certain restrictive conditions and  
16 requirements. Defendant further understands that if supervised release is imposed and he  
17 violates one or more of the conditions or requirements, Defendant could be returned to  
18 prison for all or part of the term of supervised release that was originally imposed. This  
19 could result in Defendant's serving a total term of imprisonment greater than the statutory  
20 maximum stated above.

21        Defendant understands that as a part of any sentence, in addition to any term of  
22 imprisonment and/or fine that is imposed, the Court may order Defendant to pay  
23 restitution to any victim of the offense, as required by law.

24        Defendant agrees that any monetary penalty the Court imposes, including the  
25 special assessment, fine, costs, or restitution, is due and payable immediately and further  
26 agrees to submit a completed Financial Statement of Debtor form as requested by the  
27 United States Attorney's Office.



6. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading guilty, he knowingly and voluntarily waives the following rights:

- a. The right to plead not guilty and to persist in a plea of not guilty;
- b. The right to a speedy and public trial before a jury of his peers;
- c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for him;
- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on his behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

8. **Statement of Facts.** Defendant admits he is guilty of the charged offense. The parties agree on the following facts:

a. ***Total Reclaim and Electronics Recycling:*** Defendants Jeff Zirkle and Craig Lorch are, and at all relevant times were, the owners and Chief Executive Officers of Total Reclaim, Inc. ("Total Reclaim"). Total Reclaim is a Seattle-based corporation and the Northwest's largest recycler of electronic waste. Total Reclaim's business involves recycling and/or processing multiple waste streams comprised of, among other things, a variety of domestic and commercial electronic items (referred to in some of Total Reclaim's customer agreements as "Covered Electronic Products") for public, quasi-public and private entities. Depending on the waste stream, these entities either sell these items to Total Reclaim or pay Total Reclaim a fee to process these items based on the amount and type of material recycled.

b. Some Covered Electronic Products (“CEPs”) contain materials, such as mercury, batteries, leaded glass and whole circuit boards, that can expose workers and others to serious health risks if they are mishandled during processing. These potential risks are present whenever these materials are not properly processed, but are known to exist in developing (“non-OECD”) countries, where workers sometimes disassemble electronic devices without using proper safety equipment or procedures. While worker safety laws exist in the United States to protect against such risks, many non-OECD countries do not have such laws. As a result, some entities that contract for electronics recycling services engage only processors that follow specific recycling protocols, including proscriptions or restrictions on the export of hazardous materials to non-OECD countries.

c. The Basel Convention and Basel Amendments are a set of international protocols that address the international shipment of CEPs. The United States is not a signatory to these protocols and United States law does not prohibit the export of CEPs for recycling. The Basel Convention, however, proscribes the export to non-OECD countries of “hazardous materials,” as defined in the Basel Convention,<sup>1</sup> that have not been approved in writing by the receiving country. The Basel Amendments proscribe the export of electronic items containing hazardous material to any non-OECD country for recycling or disposal.

d. One substance found in certain CEPs is mercury. Above certain established levels, mercury has the potential to cause organ damage, nerve damage, mental impairment, and a variety of other symptoms. Mercury exists in varying amounts in fluorescent lamps, including cold cathode fluorescent lamps (“CCFLs”) in liquid crystal display (“LCD”) monitors. LCD monitors are one type of flat screen monitor. Between 2009 and 2015, LCD monitors represented by far the majority of flat screen monitors sold and processed in the United States. Mercury is defined as a “hazardous material” under the Basel Convention, and as a “material of concern” under certain agreements to which Total Reclaim was a party.

e. ***Defendant’s Representations to Customers:*** To attract and retain customers, Zirkle and Lorch promoted Total Reclaim as a responsible electronics recycler. In particular, Zirkle and Lorch caused Total Reclaim to represent that Total Reclaim did not export, or allow the export of, CEPs containing hazardous materials or materials of concern to non-OECD countries. Total Reclaim’s website stated that “our

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<sup>1</sup> The Basel Convention’s definition of “hazardous material” differs from the definition of that term in United States environmental statutes and applicable regulations. Nothing in this agreement is meant to imply that the material involved in this case constitutes “hazardous material” or “hazardous waste” under United States environmental law. Accordingly, references to “hazardous material” in this agreement refer to the Basel Convention definition of that term or to the definition of that term used in certain agreements to which Total Reclaim was a party.



1 commitment to environmental responsibility is at the core of everything Total Reclaim  
 2 does,” and that this commitment is reflected in “every facet of our operations.” In  
 3 February 2003, Lorch, on behalf of Total Reclaim, signed the Electronics Recycler’s  
 4 Pledge of True Stewardship, in which Lorch represented that Total Reclaim would follow  
 5 certain best recycling practices, including that “we will not allow the export of hazardous  
 6 E-waste we handle to be exported from developed to developing countries either directly  
 7 or through intermediaries.” Total Reclaim also published on its website an  
 8 Environmental Health and Safety Policy Statement stating that Total Reclaim “prohibits  
 9 the export of hazardous electronic waste throughout the Recycling Chain which violates  
 10 the Basel Convention [or] Basel Amendments.”

11 f. Zirkle and Lorch also promoted the fact that Total Reclaim was  
 12 certified as an “E-Steward.” The E-Steward certification program is administered by a  
 13 Seattle-based non-profit organization known as the Basel Action Network (“BAN”). The  
 14 purpose of BAN and the E-Stewards program is to promote responsible electronics  
 15 recycling practices, including preventing the shipment of hazardous materials to non-  
 16 OECD countries. To obtain the E-Stewards certification, a company must agree to meet  
 17 certain standards, including compliance with the Basel Convention and Basel  
 18 Amendments, and must undergo an annual audit of its conformance to those standards.

19 g. ***Total Reclaim’s Agreements With its Customers:*** Total Reclaim’s  
 20 largest customer was the Washington Materials Management and Financing Authority  
 21 (“WMMFA”). WMMFA is a quasi-public entity financed by the electronics industry that  
 22 funds the responsible disposal of consumer electronic waste in Washington. WMMFA,  
 23 in conjunction with Washington Department of Ecology (“Washington DOE”), operates  
 24 the E-Cycle Washington program. Under E-Cycle Washington, consumers deposit used  
 25 electronics products (such as computers or televisions) at designated disposal sites (such  
 26 as Goodwill Industries drop-off centers) free of charge. WMMFA typically pays  
 27 processors, like Total Reclaim, to transport and dispose of many types of these products  
 28 in accordance with DOE regulations. Between 2009 and 2015, Total Reclaim was the  
 largest processor of E-Cycle Washington material.

h. Under its service agreement with WMMFA, Total Reclaim agreed to  
 comply with the “Preferred Performance Standards” promulgated by the Washington  
 DOE. The Preferred Performance Standards required, *inter alia*, that the processor  
 “remove from all [CEPs and components] destined for recycling any parts that contain  
 materials of concern that would pose a risk to public safety, public health or the  
 environment during subsequent processing.” The Preferred Performance Standards also  
 proscribed Total Reclaim from exporting any materials of concern (including mercury) to  
 any non-OECD country without first receiving confirmation from the receiving country  
 or the United States Environmental Protection Agency that the country legally accepts

1 such imports. Total Reclaim was required to undergo audits to verify its compliance with  
2 the Preferred Performance Standards.

3 i. Total Reclaim's service agreements with various other customers  
4 either (a) explicitly proscribed Total Reclaim from exporting materials of concern to non-  
5 OECD countries; (b) required Total Reclaim to maintain the E-Stewards certification  
6 (which requires compliance with the Basel Convention and Basel Amendments); or (c)  
7 required Total Reclaim to disclose the export of any materials of concern to non-OECD  
8 countries. For example:

- 9 • Total Reclaim's agreements with the City of Seattle and Reverse  
10 Logistics Group required that Total Reclaim maintain the E-  
11 Stewards certification;
- 12 • Total Reclaim's agreement with Manufacturers Recycling  
13 Management Company stated that Total Reclaim would not export  
14 any electronics end of life products to non-OECD countries;
- 15 • Total Reclaim's agreement with WM Recycle America proscribed  
16 Total Reclaim from allowing "hazardous e-waste" to be exported,  
17 directly or indirectly, to developing countries; and
- 18 • Total Reclaim's agreement with National Center for Electronics  
19 Recycling ("NCER") required Total Reclaim to notify NCER of all  
20 downstream vendors who received materials of concern provided to  
21 Total Reclaim.

22 j. ***The Scheme to Defraud and the Export of LCDs to Hong Kong:***  
23 Beginning no later than January 2009, and continuing until January 2016, Total  
24 Reclaim's customers began providing Total Reclaim with flat screen monitors to recycle  
25 according to the above-referenced agreements. Lorch and Zirkle knew that Total  
26 Reclaim lacked the capacity to safely recycle or process flat screen monitors and their  
27 mercury-containing components in the volume it was receiving. As a result, Zirkle and  
28 Lorch agreed that, instead of recycling the flat screen monitors as required by some of  
their customer agreements, and as stated in their marketing materials, Total Reclaim  
would sell the flat screen monitors to a company known as M-Stream without placing any  
restriction on the manner in which M-Stream disposed of the monitors. Zirkle and Lorch  
knew that M-Stream intended to export the flat screen monitors to Hong Kong for various  
purposes, including reuse, refurbishment, recycling, and disposal. Hong Kong is a non-  
OECD country that does not accept CEPs containing mercury from the United States.



1 k. Defendants knew that Total Reclaim's participation in the shipment  
 2 of flat screen monitors to Hong Kong was materially contrary to the statements made in  
 3 their marketing materials, and represented a material violation of the E-Steward standards  
 4 and the Washington DOE Preferred Processor Standards. To ensure that they would  
 5 continue to receive payments for recycling flat screen monitors, Zirkle and Lorch agreed,  
 6 with intent to defraud, to conceal this practice from Total Reclaim's customers and  
 7 auditors by means of false representations, promises, and pretenses. At least three Total  
 8 Reclaim employees in addition to Lorch and Zirkle participated in this course of conduct.

9 l. Over the period beginning no later than January 2009, and ending in  
 10 January 2016, when flat screen monitors were delivered to Total Reclaim, Zirkle and  
 11 Lorch directed their employees to transport the flat screen monitors to an off-site facility  
 12 on Harbor Island, in Seattle, where Total Reclaim stockpiled flat screen monitors, stored  
 13 various other incoming and outgoing materials, and where the company's trucking fleet  
 14 was located. Zirkle and Lorch then sold the flat screen monitors to M-Stream, knowing  
 15 that M-Stream intended to ship, and did ship, the flat screen monitors to Hong Kong.  
 16 Total Reclaim transferred at least 8.3 million pounds of flat screen monitors to M-Stream,  
 17 which were then shipped to Hong Kong in at least 430 shipping containers. During the  
 18 same time period, Total Reclaim's customers paid Total Reclaim at least \$1,182,113 to  
 19 process these flat screen monitors, and M-Stream paid Total Reclaim at least \$1,020,215  
 20 for them.

21 m. Zirkle and Lorch withheld information from Total Reclaim's  
 22 customers, auditors, and certifying bodies to conceal the fact that Total Reclaim was  
 23 causing flat screen monitors to be shipped to Hong Kong. Further, Zirkle and Lorch  
 24 falsified and caused to be falsified documentation provided to Total Reclaim's auditors  
 25 and customers to make it appear that all components of the flat screen monitors it  
 26 processed were being disposed of domestically. For example, Zirkle and Lorch prepared  
 27 or caused to be prepared end destination charts and end destination tables representing  
 28 that mercury-bearing fluorescent light tubes were disposed of in the United States, when  
 in fact, as defendants knew, they were being disposed of in Hong Kong. Similarly, Zirkle  
 and Lorch prepared annual reports to WMMFA on which Total Reclaim was required to  
 disclose the final destination for all consumer electronics products processed by Total  
 Reclaim. Zirkle and Lorch intentionally failed to list Hong Kong as a recipient of these  
 goods. Further, Zirkle and Lorch failed to disclose to their auditors the existence of the  
 Harbor Island facility used to stockpile the flat screen monitors.

n. ***The Discovery of the Fraud:*** In 2014, the BAN organization placed  
 GPS trackers in LCD monitors and introduced them into the waste stream. Tracking data  
 revealed that two of the trackers traveled to Total Reclaim facilities, then to the Total  
 Reclaim Harbor Island facility, and then to a facility in Hong Kong. BAN representatives



1 traveled to the Hong Kong sites where they observed flat screen monitors being  
 2 disassembled. The BAN representatives reported observing monitors being dismantled  
 3 through what they opined to be “a primitive process [that] relied on . . . Mainland  
 4 Chinese laborers who spent all day opening the CCFL-type LCD monitors, smashing  
 5 them apart, and throwing the aluminum, plastic and circuitry into different piles or  
 6 [containers], all in outdoor recycling operations. The pile of smashed metal on the  
 7 ground below the workstation contained significant quantities of CCFLs. No precautions  
 8 were taken with these mercury-[containing] tubes . . . inevitably releasing mercury into  
 9 the ecosystem and workplace there.”

10 o. In December 2014, BAN representatives initially confronted Lorch  
 11 with their findings that Total Reclaim was causing the export of flat screen monitors to  
 12 Hong Kong. Lorch initially did not deny the export of flat screen monitors. During a  
 13 subsequent meeting with BAN representatives, Zirkle and Lorch denied the practice,  
 14 contending that the tracking devices must have become separated from the LCD  
 15 monitors. Lorch also altered approximately 370 Total Reclaim shipping manifests to  
 16 make it appear that the manifests documented the shipment of mixed plastic to Hong  
 17 Kong, when in fact the manifests documented the shipment of flat screen monitors to  
 18 Hong Kong. In addition, Lorch and Zirkle requested that the owner of M Stream provide  
 19 them with falsified M Stream documents similarly reflecting that M Stream was shipping  
 20 plastic (rather than flat screen monitors) to Hong Kong. Lorch then provided the falsified  
 21 documents to BAN.

22 p. Zirkle and Lorch caused the transmission of interstate wire signals in  
 23 furtherance of the scheme to defraud. For example, on or about February 11, 2014,  
 24 Lorch sent an email to a WMMFA representative in which Lorch represented that Total  
 25 Reclaim disposed of mercury-bearing devices in the United States. The email traveled  
 26 from a server in Western District of Washington to a server in Massachusetts.

27 q. By virtue of the foregoing conduct, Zirkle entered into a conspiracy  
 28 to commit the crime of wire fraud, knowing of the object of the conspiracy. Zirkle and  
 his co-conspirators undertook at least one overt act, including the overt acts described  
 above, in furtherance of the object of the conspiracy.

9. **United States Sentencing Guidelines.** Defendant understands and  
 acknowledges that the Court must consider the sentencing range calculated under the  
 United States Sentencing Guidelines and possible departures under the Sentencing  
 Guidelines together with the other factors set forth in Title 18, United States Code,  
 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the

1 history and characteristics of the defendant; (3) the need for the sentence to reflect the  
 2 seriousness of the offense, to promote respect for the law, and to provide just punishment  
 3 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal  
 4 conduct; (5) the need for the sentence to protect the public from further crimes of the  
 5 defendant; (6) the need to provide the defendant with educational and vocational training,  
 6 medical care, or other correctional treatment in the most effective manner; (7) the kinds  
 7 of sentences available; (8) the need to provide restitution to victims; and (9) the need to  
 8 avoid unwarranted sentence disparity among defendants involved in similar conduct who  
 9 have similar records. Accordingly, Defendant understands and acknowledges that:

10           a.       The Court will determine applicable Defendant's Sentencing  
 11 Guidelines range at the time of sentencing;

12           b.       After consideration of the Sentencing Guidelines and the factors in  
 13 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the  
 14 maximum term authorized by law;

15           c.       The Court is not bound by any recommendation regarding the  
 16 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines  
 17 range offered by the parties or the United States Probation Department, or by any  
 18 stipulations or agreements between the parties in this Plea Agreement; and

19           d.       Defendant may not withdraw his guilty plea solely because of the  
 20 sentence imposed by the Court.

21       10.    **Acceptance of Responsibility.** At sentencing, if the district court  
 22 concludes Defendant qualifies for a downward adjustment for acceptance of  
 23 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or  
 24 greater, the United States will make the motion necessary to permit the district court to  
 25 decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),  
 26 because Defendant has assisted the United States by timely providing substantial  
 27 assistance during the government's investigation, and by timely notifying the United



1 States of his intention to plead guilty, thereby permitting the United States to avoid  
2 preparing for trial and permitting the Court to allocate its resources efficiently. The  
3 United States will not oppose Defendant's request for a downward adjustment for  
4 acceptance of responsibility.

5       11.     **Sentencing Factors.** The parties agree that the following Sentencing  
6 Guidelines provisions apply to this case:

7             a.     A base offense level of six (6) pursuant to USSG § § 2X1.1 and  
8 2B1.1(a)(2);

9             b.     A fourteen (14) level enhancement pursuant to USSG  
10 § 2B1.1(b)(1)(H) because the loss is more than \$550,000, but less than \$1,500,000;

11            c.     A two (2) level enhancement pursuant to USSG § 2B1.1(b)(10)(C)  
12 because the offense involved sophisticated means and the defendant intentionally  
13 engaged in the conduct constituting sophisticated means;

14            d.     A four (4) level enhancement pursuant to USSG § 3B1.1(a) because  
15 the defendant was an organizer or leader of a criminal activity that involved five or more  
16 participants or was otherwise extensive; and

17            e.     A two (2) level enhancement pursuant to USSG § 3B1.3 because the  
18 defendant abused a position of public or private trust and the use of a special skill.

19       The parties disagree as to whether a two (2) point enhancement is appropriate  
20 pursuant to USSG § 2B1.1(b)(15)(A), which applies to offenses involving a risk of  
21 serious bodily injury, is applicable to the facts of this case. Defendant understands that  
22 the government will advocate for the application of this adjustment, and that the Court  
23 will decide at the time of sentencing whether this enhancement should apply. Defendant  
24 understands that at the time of sentencing, the Court is free to reject these stipulated  
25 adjustments, and is further free to apply additional downward or upward adjustments in  
26 determining Defendant's Sentencing Guidelines range.

27       12.     **No Agreement Regarding Sentencing Recommendations.** Defendant  
28 understands that the parties have reached no agreements regarding the sentences they will

1 recommend. As such, the United States is free to recommend any sentence up to the  
2 applicable statutory maximum, and Defendant is free to recommend any sentence he  
3 believes to be appropriate, including a sentence of probation.

4       13.     **Restitution.** Defendant shall make restitution, pursuant to  
5 18 U.S.C. § 3663A, to the victims of the offense in an amount not greater than  
6 \$1,182,113, and not less than \$733,585. If defendant, Craig Lorch, or Total Reclaim  
7 makes restitution to the National Center for Electronics Recycling ("NCER") between the  
8 date of this Agreement and the date of sentencing as compensation for the conduct  
9 described in Paragraph 8, defendant shall receive a credit in the amount of that payment  
10 against the restitution due to NCER. This obligation shall be joint and several with the  
11 restitution obligation of Craig Lorch in this matter. This amount shall be due and payable  
12 immediately and shall be paid in accordance with a schedule of payments as proposed by  
13 the United States Probation Office and ordered by the Court.

14       14.     **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,  
15 the United States Attorney's Office for the Western District of Washington agrees not to  
16 prosecute Defendant for any additional offenses known to it as of the time of this  
17 Agreement that are based upon evidence in its possession at this time, and that arise out  
18 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the  
19 United States has agreed not to prosecute all of the criminal charges the evidence  
20 establishes were committed by Defendant solely because of the promises made by  
21 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing  
22 the Presentence Report, the United States Attorney's Office will provide the United  
23 States Probation Office with evidence of all conduct committed by Defendant.

24       Defendant agrees that any charges to be dismissed before or at the time of  
25 sentencing were substantially justified in light of the evidence available to the United  
26 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant  
27  
28



1 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119  
2 (1997).

3       15.     **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if  
4 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea  
5 Agreement and Defendant may be prosecuted for all offenses for which the United States  
6 has evidence. Defendant agrees that, in the event Defendant breaches this Plea  
7 Agreement, Defendant will not oppose any steps taken by the United States to nullify this  
8 Plea Agreement, including the filing of a motion to withdraw from the Plea Agreement.  
9 Defendant also agrees that if Defendant is in breach of this Plea Agreement, Defendant  
10 has waived any objection to the re-institution of any charges in the Indictment that were  
11 previously dismissed or any additional charges that had not been prosecuted.

12       Defendant further understands that if, after the date of this Agreement, Defendant  
13 should engage in illegal conduct, or conduct that violates any conditions of release or the  
14 conditions of his confinement, (examples of which include, but are not limited to,  
15 obstruction of justice, failure to appear for a court proceeding, criminal conduct while  
16 pending sentencing, and false statements to law enforcement agents, the Pretrial Services  
17 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement  
18 to file additional charges against Defendant or to seek a sentence that takes such conduct  
19 into consideration by requesting the Court to apply additional adjustments or  
20 enhancements in its Sentencing Guidelines calculations in order to increase the applicable  
21 advisory Guidelines range, and/or by seeking an upward departure or variance from the  
22 calculated advisory Guidelines range. Under these circumstances, the United States is  
23 free to seek such adjustments, enhancements, departures, and/or variances even if  
24 otherwise precluded by the terms of the plea agreement.

25       16.     **Waiver of Appellate Rights and Rights to Collateral Attacks.** In  
26 consideration of the commitments made by the government herein, including the  
27 government's commitment not to charge defendant with other offenses, Defendant  
28

1 waives all rights to appeal from his conviction and any pretrial rulings of the court.  
 2 Defendant further agrees that, provided the court imposes a custodial sentence that is  
 3 within or below the Sentencing Guidelines range (or the statutory mandatory minimum, if  
 4 greater than the Guidelines range) as determined by the court at the time of sentencing,  
 5 Defendant waives to the full extent of the law:

6           a. Any right conferred by Title 18, United States Code, Section 3742,  
 7 to challenge, on direct appeal, the sentence imposed by the court, including any fine,  
 8 restitution order, probation or supervised release conditions, or forfeiture order (if  
 9 applicable); and

10           b. Any right to bring a collateral attack against the conviction and  
 11 sentence, including any restitution order imposed, except as it may relate to the  
 12 effectiveness of legal representation; and

13           This waiver does not preclude Defendant from bringing an appropriate motion  
 14 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the  
 15 decisions of the Bureau of Prisons regarding the execution of his sentence.

16           If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
 17 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
 18 any way, the United States may prosecute Defendant for any counts, including those with  
 19 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
 20 Agreement.

21           17. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea  
 22 Agreement freely and voluntarily and that no threats or promises, other than the promises  
 23 contained in this Plea Agreement, were made to induce Defendant to enter his plea of  
 24 guilty.

25           18. **Statute of Limitations.** In the event this Agreement is not accepted by the  
 26 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,  
 27 the statute of limitations shall be deemed to have been tolled from the date of the Plea  
 28




1 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea  
2 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of  
3 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

4 19. **Completeness of Agreement.** The United States and Defendant  
5 acknowledge that these terms constitute the entire Plea Agreement between the parties.  
6 This Agreement binds only the United States Attorney's Office for the Western District  
7 of Washington. It does not bind any other United States Attorney's Office or any other  
8 office or agency of the United States, or any state or local prosecutor.

9 Dated: November 16, 2018.

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12 \_\_\_\_\_  
13 JEFF ZIRKLE  
14 Defendant

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16 \_\_\_\_\_  
17 HAROLD MALKIN  
18 Attorney for Defendant

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20 \_\_\_\_\_  
21 SETH WILKINSON  
22 Assistant United States Attorney  
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